

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated October 5, 2016 which denied the appellant's request to replace her power wheelchair (PWC) for a scooter, pursuant to Schedule C of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR), because the information provided to the ministry does not establish that:

- there are no resources available to the appellant or family unit to pay for the cost of or obtain the medical equipment or device [section 3(1)(b)(ii)];
- the scooter is the least expensive appropriate medical equipment or device [section 3(1)(b)(iii)];
- an assessment by the occupational therapist (OT) has confirmed the medical need for the scooter [section 3(2)(b)];
- the medical equipment or medical device previously provided by the ministry under this section is damaged, worn out or not functioning, and (a) it is more economical to replace than to repair the medical equipment or device previously provided by the ministry, and (b) the period of time, if any, set out in section 3.1 to 3.12 of this Schedule, (in this case 5 years), has passed [section 3(3)]; and
- an assessment by the OT has confirmed that it is unlikely that the person for whom the scooter has been prescribed will have a medical need for a wheelchair during the 5 years following the assessment and (c) scooter is medically essential to achieve or maintain basic mobility [section 3.4 (3)(a)(c)].



PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 62.

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Schedule C, Sections 3 and 3.4.

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included:

1. purchase authorization for a power wheelchair for a total of \$3650.75;
2. adjudicator overview approving the purchase of a PWC for \$3650.75;
3. medical equipment request and justification which is signed by the appellant and by her medical practitioner on August 10, 2016, and recommends a small electric wheelchair or scooter. It was also signed by the OT on June 10, 2015 and he recommends a specific type of PWC;
4. 5-page OT assessment dated October 6, 2015 which states, in part, that:
 - the appellant has elected to refrain from left knee replacement;
 - her primary goal is enable her to maintain her independence with daily living activities as she is growing increasingly homebound despite the use of Handi-Dart bus and in-store scooters;
 - she is unable to access the community unless attended by her son for physical support/assistance;
 - she uses a 4 wheeled walker (4WW) in her home and can walk 10-20 feet but with pain through her legs and low back;
 - currently she does not have access to the community independently;
 - she is requesting power mobility to control mobility independently and plans on using power mobility inside the home too;
 - she appears to be appropriate for a PWC more so than a scooter due to the need for in-home use;
 - she does not have alternative resources to pay for a PWC;
 - a manual wheelchair is not a realistic goal for the appellant as she has right shoulder, elbow and wrists injuries from 2009 to present, she is not able to demonstrate the required the right shoulder ROM (range of motion), and she has right hand strength and pain related difficulties; and
 - due to a history of right arm related injuries, decreased ROM and strength, scooter and manual wheelchair options were ruled out
5. quote for a PWC for a total cost of \$3650.75 dated October 6, 2015;
6. invoice from the PWC supplier addressed to the ministry for \$3650.75 and dated February 17, 2016;
7. 4-page letter from the appellant signed and dated September 20, 2016, in which she states in part:
 - the PWC was not properly fitted for her;
 - the seat is too big for her and it digs into the back side of her lower thigh;
 - her back gets sore because there is not support to lean back on;
 - her legs experience pain because there is no foot rest; and
 - she does not want the PWC because it does not fit her not because she looks bad in it as it was reported to the ministry by the vendor;
8. copy of the final page of the OT's assessment in which the appellant has underlined several sentences and wrote: "got a large PWC to big for me", and "10 minutes of driving test".
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sentences and wrote: “got a large PWC to big for me”, and “10 minutes of driving test”. An additional note states “ I did not get any letter this year telling me I have so many days to reconsider returning the wheelchair and no one else said I could”;

10. a series of small notes which, in part, state:

- the OT incorrectly described her medical conditions and she does not need PWC in a small apartment;
- a scooter gives her freedom to move her leg and body without discomfort and pain. Her right shoulder has healed;
- she was not given more than 10 minutes to trial the model wheelchair which is not long enough;
- she does not like the fit of the PWC. It is too big for her short legs/back;
- her back does not fit to the back of the (PWC's) seat. She cannot lean back. So (the PWC) does not fit as a scooter does; and
- right arm and shoulder do not ache but problems and aches exist in spine and left leg;

11. Request for Reconsideration, signed and dated September 20, 2016, and in part states that:

- the purchased PWC was trialed in the apartment and the appellant found that its seat was too long and cuts into the back of her legs. It does not fit properly;
- it was not accurate that the appellant does not like the purchased PWC because of the way she looks in it;
- if she leans back her legs go up and therefore she is not comfortable as the left leg needs to be extended.

A Notice of Appeal, signed and dated October 12, 2016, which states in part that the OT agrees that the purchased PWC is too large for the appellant.

At the Hearing:

Note: The appellant stated that she did not receive the appeal record. The appellant was presented with the options of continuing the hearing or adjourning it until she had received the appeal record. The appellant opted to proceed with the hearing.

The appellant presented the following:

- the purchased PWC was not fitted for her, it cuts into her leg and that she cannot use it;
- the model PWC was only trialed for 10 minutes;
- her left arm is partially numb and several fingers on her right hand are also numb so she cannot use the joystick of the purchased PWC;
- she used a 4 wheeled walker for 10 years but finds it too difficult to use now as she must drag her left leg along;
- she is old and will not need any other equipment for mobility;
- OT and physician both stated that a scooter is better suited for the appellant's needs;
- she uses the scooters that are provided at stores and finds them much easier to use; and
- she had a scooter before and liked it. It needed repairs and she regrets not getting them done.

In response to questions, the appellant stated:

- there is no new medical evidence regarding her medical conditions filed after the denial;

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- she has no quotes for a new scooter;
 - other venders would accept the purchased PWC on trade but want additional funds that she does not have;
 - the scooter would mean comfort and independence for the appellant because the purchased PWC does not have enough room, her back would be supported and the controls are easier to use;
 - the vender offered to trade in the purchased PWC for a used scooter but it looked damaged;
 - she tried to sell the purchased PWC and thinks she could only get \$1600 which is not enough to purchase a scooter; and
 - her quality of life is low without mobility.

The ministry relied on its reconsideration decision and added that the ministry would not have purchased a PWC if the appellant did not agree that she needed one. By signing the medical equipment request and justification form she agreed with the physician's request of a small electric wheelchair or scooter and the OT's assessment that she needed a PWC.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision which held that the appellant is not eligible for a replacement of her power wheelchair for a scooter because she failed to meet the legislative criteria set out in the EAPWDR was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant failed to meet the criteria listed in section 62 and Schedule C sections 3(1)(b)(ii), 3(1)(b)(iii), 3(2)(b), 3(3) and 3.4 (3)(a)(c) of the EAPWDR?

The relevant legislation requires the following:

EAPWDR

General health supplements

62 The minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C to or for

- (a) a family unit in receipt of disability assistance,
- (b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is a dependent child, or
- (c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

Schedule C, section 3 and 3.4

Medical equipment and devices

3 (1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in sections 3.1 to 3.12 of this Schedule are the health supplements that may be provided by the minister if

- (a) the supplements are provided to a family unit that is eligible under section 62 [*general health supplements*] of this regulation, and
- (b) all of the following requirements are met:
 - (i) the family unit has received the pre-authorization of the minister for the medical equipment or device requested;
 - (ii) there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device;
 - (iii) the medical equipment or device is the least expensive appropriate medical equipment or device.

(2) For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, in addition

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to the requirements in those sections and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

(a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;

(b) an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if

(a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and

(b) the period of time, if any, set out in sections 3.1 to 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed.

Medical equipment and devices — scooters

3.4 (1) In this section, "**scooter**" does not include a scooter with 2 wheels.

(2) Subject to subsection (5) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if all of the requirements set out in subsection (3) of this section are met:

(a) a scooter;

(b) an upgraded component of a scooter;

(c) an accessory attached to a scooter.

(3) The following are the requirements in relation to an item referred to in subsection (2) of this section:

(a) an assessment by an occupational therapist or a physical therapist has confirmed that it is unlikely that the person for whom the scooter has been prescribed will have a medical need for a wheelchair during the 5 years following the assessment;

(b) the total cost of the scooter and any accessories attached to the scooter does not exceed \$3 500 or, if subsection (3.1) applies, \$4 500;

(c) the minister is satisfied that the item is medically essential to achieve or maintain basic mobility.

(3.1) The maximum amount of \$4 500 under subsection (3) (b) applies if an assessment by an occupational therapist or a physical therapist has confirmed that the person for whom the scooter has been prescribed has a body weight that exceeds the weight capacity of a conventional scooter but can be accommodated by a bariatric scooter.

(4) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (2) of this section is 5 years after the minister provided the item being replaced.

(5) A scooter intended primarily for recreational or sports use is not a health supplement for the purposes of section 3 of this Schedule.

The Appellant's Position

The appellant argues that the purchased PWC does not meet her needs as it is too big and causes her leg pain when used. She also argues that she is not mobile because she cannot use the purchased PWC and does not have any other means of mobility. Finally, she argues that her OT and physician both agree that she needs a scooter.

The ministry argues that the appellant does not qualify for the purchase of scooter pursuant Schedule C sections 3(1)(b)(ii), 3(1)(b)(iii), 3(2)(b), 3(3) and 3.4 (3)(a)(c) of the EAPWDR.

Panel's Decision

No Resources Available

Schedule C of the EAPWDR, section 3(1)(b)(ii) states that medical equipment or device can be if the family unit does not have the resources to pay for or obtain it. The appellant has argued that she tried to sell the purchased PWC and thinks she can only get \$1600 for it. The panel notes that the appellant has not provided any evidence to demonstrate that her PWC is now only worth \$1600 or that she cannot purchase a scooter for \$1600. The panel finds that the ministry reasonably determined that the evidence demonstrates that the appellant failed to establish that she does not have the resources to pay for or obtain a scooter.

Least Expensive Appropriate Equipment or Device.

Schedule C of the EAPWDR, section 3(1)(b)(iii) states that the medical equipment or device requested must be the least expensive appropriate medical equipment or device. The appellant argues that a scooter is the most appropriate option for her because she finds it easy to use and comfortable. She also argues that her physician and OT stated that she should use a scooter. The panel notes that the evidence from the physician is that either a small electric wheelchair or scooter is recommended, and in his assessment the OT specifically states "due to [the appellant] having a history of right arm related injuries, decreased ROM (range of motion) and strength, scooter and manual wheelchair options were ruled out". Though the appellant argued that the OT's assessment was incorrect, she did not provided any evidence to demonstrate as such. The panel finds that the ministry reasonably determined that the evidence demonstrates that a scooter would not be the least expensive appropriate medical equipment or device for the appellant.

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Medical Need for the Equipment or Device.

Schedule C of the EAPWDR, section 3(2)(b) states that an assessment from an OT or physical therapist (PT) must confirm the medical need for the medical equipment or device. The appellant has argued that she needs a scooter because the purchased PWC causes pain in her leg and her OT and physician support this need. However as stated previously, the assessment from the OT specifically states that a scooter and manual wheelchair were ruled out as options due to the appellant's history of right arm related injuries, decreased RO and strength. The panel finds that the ministry reasonably determined that the OT assessment does not demonstrate that a scooter is needed medically.

Damaged, Worn Out or Not Functioning

Schedule C of the EAPWDR, section 3(3) states that medical equipment or device, previously provided by the ministry may be replaced if it is damaged, worn out or not functioning, if (a) it is more economical to replace than to repair the equipment or device, and (b) the time frame set out in Schedule C (5 years) has past . The appellant does not argue that the PWC provided for her is damaged, worn out or not functioning nor was there any evidence at the time of the reconsideration decision to suggest as such. Therefore, it would not be more economical to replace the PWC. The PWC was purchased for the appellant in February 2016. Therefore 5 years have not passed since it purchase and accordingly it cannot be replaced. The panel finds that the ministry reasonably determined that the evidence provided does not meet the requirements for replacement of the purchased PWC pursuant to section 3(3) of Schedule C of the EAPWDR.

Medical Need for a Wheelchair

Schedule C of the EAPWDR, section 3.4(a) and (c) state that (a) an OT or PT must confirm that it is unlikely that the person for whom the scooter has been prescribed will have a medical need for a wheelchair during the 5 years following the assessment and (c) the ministry must be satisfied that the prescribed medical equipment or device is medically essential to achieve basic mobility. The appellant argued that she will not use the purchased PWC because it does not fit her and she prefers to use only a scooter. The panel notes that in his assessment, the OT does not confirm that it is unlikely that the appellant will need a wheelchair in the next 5 years following his assessment, to the contrary, the OT recommends a PWC. The appellant argues that since she cannot use the purchased PWC, she has low mobility and must rely on her son to get around. The panel notes that in his assessment the OT states that it is the appellant's plan to access the community with power mobility but her primary goal for power mobility is to decrease her dependence on her son for mobility in the home and to exit her building, and that a scooter has been ruled out to achieve these goals due to the appellant's medical conditions. As previously stated the OT recommends a small PWC. Therefore the panel finds that the ministry reasonably determined that the evidence demonstrates that it has not been confirmed that the appellant is unlikely to require a wheelchair in the 5 years following the OT's assessment and that the scooter is medically essential to achieve basic mobility.

Conclusion

The panel finds that the ministry decision to deny the appellant a replacement for her PWC for a scooter pursuant to Schedule C sections 3(1)(b)(ii), 3(1)(b)(iii), 3(2)(b), 3(3) and 3.4 (3)(a)(c) of the EAPWDR is reasonably supported by the evidence and is a reasonable application of the applicable legislation. The panel therefore confirms the ministry's decision. The appellant is not successful in her appeal.